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Attorneys for Defendants

MERRILL LYNCH & CO., INC. and

MERRILL, LYNCH, PIERCE, FENNER & SMITH, INC.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

TREVOR CALLAN, TIMOTHY CALLAN
and RYAN CALLAN, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

MERRILL LYNCH & CO., INC., ET AL.,

Defendants.

CASE NO. 09-CV-0566 BEN (WMc)

**DECLARATION OF MATTHEW C.
KANE IN SUPPORT OF MERRILL
LYNCH DEFENDANTS'
MOTION FOR JUDGMENT ON THE
PLEADINGS OR, IN THE
ALTERNATIVE, FOR SUMMARY
JUDGMENT OR PARTIAL SUMMARY
JUDGMENT:**

Date: June 28, 2010

Time: 10:30 a.m.

Courtroom: 3

Judge: Hon. Roger T. Benitez

DECLARATION OF MATTHEW C. KANE

I, MATTHEW C. KANE, declare as follows:

1. I am an attorney at law duly authorized and admitted to practice before this Court and the courts of the State of California. I am a partner in the law firm of McGuireWoods LLP, counsel of record for Defendants Merrill Lynch & Co., Inc. and Merrill Lynch, Pierce, Fenner & Smith, Inc. (collectively, the "Merrill Lynch Defendants") in this action. I am over 18 years of age. I have personal knowledge of the facts and matters set forth in this declaration and could and would testify competently and truthfully to the same if called as a witness and placed under oath.

2. I make this declaration in support of the Merrill Lynch Defendants' accompanying Motion For Judgment On The Pleadings Or, In The Alternative, For Summary Judgment Or Partial Summary Judgment (the "Motion").

3. Attached hereto as Exhibit A is a true and correct copy of the Complaint filed in this action on March 19, 2009 (Dkt. #1).

4. Attached hereto as Exhibit B is a true and correct copy of the Order and Final Judgment in *In Re Merrill Lynch & Co., Inc. Securities, Derivative & ERISA Litigation*, Master File No. 07-cv-9633 (JSR)(DFE), Case No. 07-cv-10268 (JSR)(DFE), entered on August 24, 2009 by the United States District Court for the Southern District of New York (Master File Docket Entry No. 253-2).

5. Attached hereto as Exhibit C is a true and correct copy of the Consolidated Supplemental Complaint filed in *In Re Merrill Lynch & Co., Inc. Securities, Derivative & ERISA Litigation*, S.D.N.Y. Master File No. 07-cv-9633 (JSR)(DFE) (Docket Entry No. 109), Case No. 07-cv-10268 (JSR)(DFE) (Docket Entry No. 64).

